at the secondary-school level? Do we want to impose an arbitrary and mechanical admissions standard—based on fixed rank-in-class—on a process that should involve careful consideration of all of an applicant's qualifications as well as thoughtful attention to the overall characteristics of the applicant pool?

Place heavy weight on ''geographic distribution'' and so-called ''experiential'' factors, such as a student's ability to overcome obstacles and handicaps of various kinds, or the experience of living in a home where a language other than English is spoken. The argument here is that, if special attention were given to these and analogous criteria, then a sizable pool of qualified minority students would automatically be created.

But, as we have mentioned, colleges have been using precisely such criteria for many decades, and they have discovered—not surprisingly—that there are large numbers of very competitive ''majority'' candidates in all of the suggested categories. For example, if a student's home language is Russian, Polish, Arabic, Korean, or Hebrew, will that be weighted by a college as strongly as Spanish? If not, then the institutions will clearly be giving conscious preference to a group of underrepresented minority students—Hispanic students—in a deliberate way that explicitly takes ethnicity (or, in other cases, race) into account.

Similar issues arise with respect to other experiential categories, as well as geographic distribution. There is no need to speculate about (or experiment with) such approaches, because colleges have already had nearly a half century of experience applying them, and there is ample evidence that the hoped-for results, in terms of minority representation, are not what many people now suggest or claim. Moreover, insofar as such categories were to become surreptitious gateways for minority students, they would soon run the risk of breeding cynicism, and almost certainly inviting legal challenges.

All of the indirect approaches just described pose serious problems. Nor can they be accurately described as ''race-neutral.'' They have all been proposed with the clear goal (whether practicable or not) of producing an appreciable representation of minority students in higher education. In some cases, they involve the conscious use of a kind of social engineering decried by critics of race-sensitive admissions.

Surely the best way to achieve racial diversity is to acknowledge candidly that minority status is one among many factors that can be considered in an admissions process designed to judge individuals on a case-by-case basis. We can see no reason why a college or university should be compelled to experiment with—and ''exhaust''—all suggested alternative approaches before it can turn to a carefully tailored race-sensitive policy that focuses on individual cases. The alternative approaches are susceptible to systematic analysis, based on experience and empirical investigation. A preponderance of them have been tested for decades. All can be shown to be seriously deficient. Indeed, if genuinely race-neutral (and educationally appropriate) methods were available, colleges and universities would long ago have gladly embraced them.

8. Reasonable degrees of institutional autonomy should be permitted—accompanied by a clear expectation of accountability.

As the courts have recognized in other contexts (for example, in giving reasonable deference to administrative agencies), a balance has to be struck between judicial protection of rights guaranteed to all of us by the Constitution and the desirability of giving a presumption of validity to the judgments of those with special knowledge, experience, and closeness to the actual decisions being made. The widely acclaimed heterogeneity of the American system of higher education has permitted much experimentation in admissions, as in other areas, and has discouraged the kinds of government-mandated uniformity that we find in many other parts of the world. Serious consideration should be given to the disadvantages of imposing too many ''do's'' and ''don'ts'' on admissions policies.

The case for allowing a considerable degree of institutional autonomy in such sensitive and complex territory is inextricably tied, in our view, to a clear acceptance by colleges and universities of accountability for the policies they elect and the ways such policies are given effect. There is, to be sure, much more accountability today than many people outside the university world recognize. Admissions practices are highly visible and are subject to challenge by faculty members, trustees and regents, avid investigative reporters, disappointed applicants, and the public at large. Colleges and universities operate in more of a ''fishbowl'' environment than the great majority of other private and public entities. Nonetheless, we favor even stronger commitments by colleges and universities to monitor closely how specific admissions policies work out in practice. Studies of outcomes should be a regular part of college and university operations, and if it is found, for example, that minority students (or other students) accepted with certain test scores or other qualifications are consistently doing poorly, then some change in policy—or some change in the personnel responsible for administering the stated policy—may well be in order.

That point was made with special force by a very conservative friend of ours, Charles Exley, former chairman and CEO of NCR Corporation and a onetime trustee of Wesleyan University. In a pointed conversation that one of us (Bowen) will long remember, Exley explained that he held essentially the same view that we hold concerning who should select the criteria and make admissions decisions. ''I would probably not admit the same class that you would admit, even though I don't know how different the classes would be,'' he said. ''You will certainly make mistakes,'' he went on, ''but I would much rather live with your errors than with those that will inevitably result from the imposition of more outside constraints, including legislative and judicial interventions.'' And then, with the nicest smile, he concluded: ''And, if you make too many mistakes, the trustees can always fire you!''

9. Race matters profoundly in America; it differs fundamentally from other ''markers'' of diversity, and it has to be understood on its own terms.

We believe that it is morally wrong and historically indefensible to think of race as ''just another'' dimension of diversity. It is a critically important dimension, but it is also far more difficult than others to address. The fundamental reason is that racial classifications were used in this country for more than 300 years in the most odious ways to deprive people of their basic rights. The fact that overt discrimination has now been outlawed should not lead us to believe that race no longer matters. As the legal scholar Ronald Dworkin has put it, ''the worst of the stereotypes, suspicions, fears, and hatreds that still poison America are color-coded . . .''

The after effects of this long history continue to place racial minorities (and especially African-Americans) in situations in which embedded perceptions and stereotypes limit opportunities and create divides that demean us all. This social reality, described with searing precision by the economist Glenn C. Loury in The Anatomy of Racial Inequality, explains why persistence is required in efforts to overcome, day by day, the vestiges of our country's ''unlovely racial history.'' We believe that it would be perverse in the extreme if, after many generations when race was used in the service of blatant discrimination, colleges and universities were now to be prevented from considering race at all, when, at last, we are learning how to use nuanced forms of race-sensitive admissions to improve education for everyone and to diminish racial disparities.

The former Attorney General Nicholas Katzenbach draws a sharp distinction between the use of race to exclude a group of people from educational opportunity (''racial discrimination'') and the use of race to enhance learning for all students, thereby serving the mission of colleges and universities chartered to serve the public good. No one contends that white students are being excluded by any college or university today simply because they are white.

William G. Bowen is president emeritus of Princeton University and president of the Andrew W. Mellon Foundation. He is the co-author, with Derek Bok, of The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions (Princeton University Press, 1998) and, with Sarah A. Levin, of Reclaiming the Game: College Sports and Educational Values (Princeton University Press, forthcoming in 2003). Neil L. Rudenstine is president emeritus of Harvard University and chairman of the board of ARTstor. His extended essay ''Diversity and Learning'' (The President's Report: 1993–1995, Harvard University) focuses on the value of diversity in higher education from the mid-19th century to the present.

THE IMPORTANCE OF TITLE IX

Mr. LEAHY. Mr. President, today the Commission on Opportunity in Athletics sent Secretary Rod Paige their recommendations to change the landmark gender equity law—Title IX.

Two members of the Commission—Julie Foudy and Donna de Varona—decided not to sign the report and instead submitted a minority report because they found the final report slanted, incomplete, and failing to acknowledge that discrimination against women in education still exists. I am very disappointed the Commission did not write a more balanced report, which all members would have felt comfortable signing.

Since its passage more than 30 years ago as part of the Education Amendments of 1972, Title IX has played a monumental role in the advancement of equality for women throughout America. This landmark legislation has opened the doors to colleges, universities and sports team locker rooms for our sisters, daughters and friends. Women's participation in sports has dramatically increased so that women now make up about 40 percent of all college athletics, compared with 15 percent in 1972. Studies have shown that women who participate in athletics learn important values such as, teamwork, leadership, and discipline—values that stay with them throughout their lives.

On January 29, Senators DASCHLE, SNOWE, KENNEDY, SPECTER, MURRAY

and I wrote to Education Secretary Rod Paige urging him to defend and strengthen the enforcement of current Title IX policies and regulations. Today, I joined those same Senators in a letter urging President Bush to reaffirm the current policies under Title IX and to reject the changes to those policies proposed by the Commission.

Over the past 30 years, Title IX has been a good and fair law and it should not be weakened in any way. I urge President Bush and Education Secretary Rod Paige to give as much consideration to the report filed by Julie Foudy and Donna de Varona as they do to the majority report and to ultimately reject any efforts to weaken Title IX and its goal to address widespread sex discrimination in athletics and all other aspects of education.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. In the last Congress Senator KENNEDY and I introduced the Local Law Enforcement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred in March 2001 in Portage, WI. A gay man was found murdered in an apartment. The assailant, Darrin Grosskopf, was drinking with the victim, Keith Ward, and claimed that Ward made sexual advances toward him. Grosskopf told police that he thought Ward was a homosexual. When police found Ward's body in the apartment, he was naked and had a stab wound in his chest.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

RULES OF THE SENATE: PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Ms. COLLINS. Mr. President, Senate Standing Rule XXVI requires each committee to adopt rules to govern the procedure of the Committee and to publish those rules in the CONGRESSIONAL RECORD not later than March 1 of the first year of each Congress. On February 26, 2003, a majority of the members of the Committee on Governmental Affairs' Permanent Subcommittee on Investigations adopted subcommittee rules of procedure.

Consistent with Standing Rule XXVI, I ask unanimous consent to have printed in the RECORD a copy of the rules of the Permanent Subcommittee on Investigations.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

108TH CONGRESS RULES OF PROCEDURE FOR THE SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS AS ADOPTED—FEBRUARY 26, 2003

1. No public hearing connected with an investigation may be held without approval of either the Chairman and the Ranking Minority Member or the approval of a majority of the Members of the Subcommittee. In all cases, notification to all Members of the intent to hold hearings must be given at least 7 days in advance to the date of the hearing. The Ranking Minority Member should be kept fully apprised of preliminary inquiries, investigations, and hearings. Preliminary inquiries may be initiated by the Subcommittee majority staff upon the approval of the Chairman and notice of such approval to the Ranking Minority Member or the minority counsel. Preliminary inquiries may be undertaken by the minority staff upon the approval of the Ranking Minority Member and notice of such approval to the Chairman or Chief Counsel. Investigations may be undertaken upon the approval of the Chairman of the Subcommittee and the Ranking Minority Member with notice of such approval to all members.

No public hearing shall be held if the minority Members unanimously object, unless the full Committee on Governmental Affairs by a majority vote approves of such public hearing.

Senate Rules will govern all closed sessions convened by the Subcommittee (Rule XXVI, Sec. 5(b), Standing Rules of the Senate).

2. Subpoenas for witnesses, as well as documents and records, may be authorized and issued by the Chairman, or any other Member of the Subcommittee designated by him, with notice to the Ranking Minority Member. A written notice of intent to issue a subpoena shall be provided to the Chairman and Ranking Minority Member of the Committee, or staff officers designated by them, by the Subcommittee Chairman or a staff officer designated by him, immediately upon such authorization, and no subpoena shall issue for at least 48 hours, excluding Saturdays and Sundays, from delivery to the appropriate offices, unless the Chairman and Ranking Minority Member waive the 48 hour waiting period or unless the Subcommittee Chairman certifies in writing to the Chairman and Ranking Minority Member that, in his opinion, it is necessary to issue a subpoena immediately.

3. The Chairman shall have the authority to call meetings of the Subcommittee. This authority may be delegated by the Chairman to any other Member of the Subcommittee when necessary.

4. If at least three Members of the Subcommittee desire the Chairman to call a special meeting, they may file in the office of the Subcommittee, a written request therfor, addressed to the Chairman. Immediately thereafter, the clerk of the Subcommittee shall notify the Chairman of such request. If, within 3 calendar days after the filing of such request, the Chairman fails to call the requested special meeting, which is to be held within 7 calendar days after the filing of such request, a majority of the Subcommittee Members may file in the office of the Subcommittee their written notice that a special Subcommittee meeting will be held, specifying the date and hour thereof, and the Subcommittee shall meet on that date and hour. Immediately upon the filing of such notice, the Subcommittee clerk shall notify all Subcommittee Members that such special meeting will be held and inform them of its dates and hour. If the Chairman is not present at any regular, additional or special meeting, the ranking majority Member present shall preside.

5. For public or executive sessions, one Member of the Subcommittee shall constitute a quorum for the administering of oaths and the taking of testimony in any given case or subject matter.

Five (5) Members of the Subcommittee shall constitute a quorum for the transaction of Subcommittee business other than the administering of oaths and the taking of testimony.

6. All witnesses at public or executive hearings who testify to matters of fact shall be sworn.

7. If, during public or executive sessions, a witness, his counsel, or any spectator conducts himself in such a manner as to prevent, impede, disrupt, obstruct, or interfere with the orderly administration of such hearing, the Chairman or presiding Member of the Subcommittee present during such hearing may request the Sergeant at Arms of the Senate, his representation or any law enforcement official to eject said person from the hearing room.

8. Counsel retained by any witness and accompanying such witness shall be permitted to be present during the testimony of such witness at any public or executive hearing, and to advise such witness while he/she is testifying, or his legal rights, Provided, however, that in the case of any witness who is an officer or employee of the government, or of a corporation or association, the Subcommittee Chairman may rule that representative by counsel from the government, corporation, or association, or by counsel representing other witnesses, creates a conflict of interest, and that the witness may only be represented during interrogation by staff or during testimony before the Subcommittee by personal counsel not from the government, corporation, or association, or by personal counsel not representing other witnesses. This rule shall not be construed to excuse a witness from testifying in the event his counsel is ejected for conducting himself in such a manner so as to prevent, impede, disrupt, obstruct, or interfere with the orderly administration of the hearings; nor shall this rule be construed as authorizing counsel to coach the witness or answer for the witness. The failure of any witness to secure counsel shall not excuse such witness from complying with a subpoena or deposition notice.

9. Depositions.

9.1 Notice. Notices for the taking of depositions in an investigation authorized by the Subcommittee shall be authorized and issued by the Chairman. The Chairman of the full Committee and the Ranking Minority Member of the Subcommittee shall be kept fully apprised of the authorization for the taking of depositions. Such notices shall specify a time and place of examination, and the name of the Subcommittee Member or Members or staff officer or officers who will take the deposition. The deposition shall be in private. The Subcommittee shall not initiate procedures leading to criminal or civil enforcement proceedings for a witness' failure to appear unless the deposition notice was accompanied by a Subcommittee subpoena.

9.2 Counsel. Witnesses may be accompanied at a deposition by counsel to advise them of their legal rights, subject to the provisions of Rule 8.

9.3 Procedure. Witnesses shall be examined upon oath administered by an individual authorized by local law to administer oaths. Questions shall be propounded orally by Subcommittee Members or staff. Objections by the witness as to the form of questions shall